

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

BAGLY, *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 20-cv-11297-PBS

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants respectfully notify the Court of legal developments subsequent to the filing of Defendants' reply in support of their assertion of mootness, ECF No. 171.

Since the United States Department of Health and Human Services ("HHS") promulgated the Final Rule, *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) (the "2024 Rule"), several district courts have entered preliminary relief against HHS preventing the agency from enforcing provisions of that rule. The parties dispute the materiality of these orders to the issue of whether there remains a substantial controversy between parties with adverse interests in this case. *Compare* ECF No. 167 at 6-7, 8, *with*, ECF No. 171 at 2-9. But given Plaintiffs' reliance on these orders, Defendants respectfully notify the Court that one has been modified since briefing on Defendants' assertion of mootness concluded. Specifically, on August 30, 2024, the district court in *Texas v. Becerra*, No. 6:24-cv-211 (E.D. Tex.), issued an order modifying its earlier order granting the *Texas* plaintiffs preliminary relief. Order Modifying Stay at 4, *Texas v. Becerra*, No. 6:24-cv-211 (E.D. Tex. Aug. 30, 2024), ECF No. 41. That court's prior order had stayed the effective date of all provisions of the 2024 Rule as to the States of Texas and Montana as well as all covered entities in those states, Memorandum Opinion and Order at 27, *Texas v. Becerra*, No. 6:24-cv-211 (E.D. Tex. July 3, 2024), ECF No. 18; the court's modified

order stays nationwide the effective date of only the following provisions of the 2024 Rule that implement Section 1557 of the Affordable Care Act:

45 C.F.R. §§ 92.101(a)(2) (and all references to this subsection), 92.206(b), 92.207(b)(3)–(5).

Order Modifying Stay at 4, *Texas v. Becerra*, No. 6:24-cv-211 (E.D. Tex. Aug. 30, 2024), ECF No. 41.¹ Accordingly, no district court order precludes HHS from enforcing the scope of covered entities as codified in the 2024 Rule, 45 C.F.R. §§ 92.2, 92.4 (defining “Health program or activity”), among other provisions of the 2024 Rule. The Government has appealed the *Texas* court’s orders as well as orders issuing preliminary relief in other cases raising challenges to provisions of the 2024 Rule.

Dated: October 4, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Liam C. Holland
Liam C. Holland (BBO #704799)
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 514-4964
liam.c.holland@usdoj.gov

Counsel for Defendants

¹ The Order Modifying Stay also stays the effective date of several provisions of Title 42 of the Code of Federal Regulations that do not implement Section 1557 of the Affordable Care Act. Order Modifying Stay at 4, *Texas v. Becerra*, No. 6:24-cv-211 (E.D. Tex. Aug. 30, 2024), ECF No. 41.